

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
(Northern Division)

UNITED STATES OF AMERICA,)	
)	
and the STATE OF MISSISSIPPI,)	
)	
Plaintiffs,)	
)	Case No. 3:12-cv-790 TSL-RPM
)	
v.)	
)	<u>JOINT STATUS REPORT</u>
)	<u>UPDATE</u>
THE CITY OF JACKSON, MISSISSIPPI,)	
)	
Defendant.)	
_____)	

Plaintiffs, the United States of America, on behalf of the U.S. Environmental Protection Agency (“EPA”), and the State of Mississippi, by and through the Mississippi Commission of Environmental Quality, acting through the Mississippi Department of Environmental Quality (collectively, “MDEQ”); and Defendant, the City of Jackson, Mississippi (the “City” or “Jackson”); and together with Plaintiffs, (the “Parties”), submit this Joint Status Report Update to update the Court of the activities amongst the Parties since the date of the last Joint Status Report on July 29, 2022. Docket No. 22.

Safe Drinking Water Act Compliance Issues

As this Court is likely aware, during the last week of August 2022, excessive rainfall and extreme flooding exacerbated pre-existing problems at the O.B. Curtis Water Treatment Plant by disturbing the water treatment process and preventing the plant from

producing enough potable water to establish adequate pressure in the drinking water distribution system. As a result of the decreased water pressure, most drinking water system users lost the ability to use water for any purpose, including drinking, cooking, or basic safety and hygiene.

On August 29 and 30, 2022, the City Mayor, the Governor of Mississippi, and the President of the United States each declared that an emergency existed in the City. The City's emergency declaration expressed its intention to "continue[] to explore all avenues to address the staffing levels, deferred maintenance and emergency repairs at both water treatment plants" and requested local and statewide assistance to support the City's response and recovery efforts. The state's emergency order directed Mississippi State Department of Health ("MSDH") and the Mississippi Emergency Management Agency ("MEMA") to establish a state incident command center and to take action to abate the emergency. Local, state, and federal agencies then joined together to form a Unified Command, consisting of subject matter experts from EPA, the Federal Emergency Management Agency ("FEMA"), the City, MSDH, and MEMA. The Unified Command set several objectives, including reestablishing minimum levels of water distribution from the O.B. Curtis and the J.H. Fewell Water Treatment Plants. On September 6, 2022, water pressure was restored, and water service resumed. However, the boil water notice, which had been in place since July 29, 2022, due to preexisting water quality issues, remained in effect until September 15, 2022. Although City water service is now generally available, many of the underlying factors that contributed to the August-September emergency remain unresolved. *See Generally, Memorandum in Support of*

Unopposed Motion to Enter Interim Stipulated Order, United States v. City of Jackson, Case No. 3:22-cv-00686-HTW-LGI, Docket No. 3 at pp. 4-5, (S.D. Miss. Nov. 29, 2022).

On November 29, 2022, the United States filed a complaint against the City under the Safe Drinking Water Act. *United States v. City of Jackson*, Case No. 3:22-cv-00686-HTW-LGI, Docket No. 1 (S.D. Miss. Nov. 29, 2022). Along with the Complaint, the United States sought entry of an Interim Stipulated Order, agreed to by both the City and MSDH, to provide for the appointment of an Interim Third Party Manager, who under the supervision of the Court, will implement certain priority projects agreed to by the parties to the Order. The Court approved the Interim Stipulated Order and stayed proceedings in the case for a period of 6 months. *Id.* at Docket Nos. 5 and 6.

2012 Clean Water Act Consent Decree

Since the date of the last Joint Status Report Update, the Parties, including counsel, technical staff, and consultants involved in the Clean Water Act matter have devoted almost all their attention to the emergency that existed with the drinking water system. Those activities included negotiation of the Interim Stipulated Order that was approved by the Court in that matter. While the purpose of the Interim Stipulated Order is to stabilize the drinking water system, it does provide a consultation role for both EPA and MDEQ to the extent there may be a material impact on the City's sewer system. *See*, Interim Stipulated Order, Docket No. 6 at Subparagraphs 5(b) and 6(c).

In connection with the Parties' efforts to get the City back into compliance with the Consent Decree, the City has provided certain documents to the United States and MDEQ. Subject to the Confidentiality Order, the City has provided a proposed

amendment to the Consent Decree, an updated Long Term Financial Model, and an updated AMI Remediation, Revenue Stabilization, and SORP Implementation Plan (“Revenue Stabilization Plan”).

Discussions Regarding Possible Modification to Consent Decree

As noted above, the City has provided EPA and MDEQ with certain information subject to the Court’s Confidentiality Order, including its proposed language to modify the current Consent Decree. In addition, the City will be providing an updated Long Term Financial Model to EPA and MDEQ, including information from the City’s past fiscal year. The Long Term Financial Model provides a tool for EPA and MDEQ to assess the City’s financial condition, including the City’s current and future capability to fund the proposed injunctive relief under the proposed modified Consent Decree. The Long Term Financial Model specifically will consider the financial capability of the citizens of the City of Jackson to pay for increased costs of service and the City’s current and future ability to obtain loan and bond financing to support implementation of the Consent Decree. The updated Revenue Stabilization Plan provides current information regarding the status of the City’s efforts to restore its metering and billing system. EPA and MDEQ are evaluating the proposed language implementing the requested modifications to the Consent Decree. In addition, EPA has requested additional details regarding certain confidential financial information provided by the City. The United States is having its financial consultants evaluate the information that has been provided and as a result, certain additional information has been requested, and provided, by the City. While many of the people involved in these discussions have been involved in the

Safe Drinking Water Act matter, the Parties will again engage in regular conversations about the proposed modifications to the Consent Decree as well as the financial information and models. The Parties respectfully propose that they provide the Court with another Joint Status Report Update by May 5, 2023. The Plaintiffs also reserve the right to request a Status Conference with the Court before that date should it determine such action is appropriate.

Respectfully submitted this 2nd day of December 2022.

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